

Hearing Date and Time: January 29, 2013 at 10:00 a.m. (Prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | : | Chapter 11 |
| | : | |
| LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> , | : | Case No. 08-13555 (JMP) |
| | : | |
| Debtors. | : | |
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**RESPONSE OF UNION INVESTMENT INSTITUTIONAL GMBH IN
OPPOSITION TO THE MOTION OF LEHMAN BROTHERS HOLDINGS INC.,
PURSUANT TO SECTION 105(A) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 7004(A)(1), TO EXTEND STAY OF AVOIDANCE
ACTIONS AND GRANT CERTAIN RELATED RELIEF**

Union Investment Institutional GmbH (“Union Investment”)¹ submits this Response in
Opposition to the Motion of Lehman Brothers Holdings Inc. (“LBHI”) to Extend the Stay of

¹ This Response shall not be deemed or construed to be a consent to the jurisdiction of the Bankruptcy Court or a waiver of any other rights, remedies, claims, actions, setoffs, recoupments, or defenses, as appropriate, to which Union Investment Institutional GmbH is or may be entitled in law or equity, and Union Investment Institutional GmbH expressly reserves all rights, remedies, claims, actions, setoffs, recoupments, and defenses (including, but not limited to, lack of personal jurisdiction).

Avoidance Actions and Grant Certain Related Relief [ECF No. 42023] (the “Motion”), and respectfully states as follows:

1. Union Investment, a defendant in adversary proceeding captioned *Lehman Brothers Special Financing, Inc. v. Bank of America National Association*, No. 10-03547 (referred to in the Motion as the “Distributed Action”), has no objection to (a) a further extension of the stay of that Action until May 20, 2014 or (b) a further extension of the deadline to complete service of the Second Amended Complaint on defendants in that Action until May 20, 2014.

2. Union Investment does object, however, to the entry of an order implementing the “Litigation Protocol for the Distributed Action” as requested by LBHI in the Motion (the “Litigation Protocol”).

3. LBHI provided the parties with notice of the Motion and of the Litigation Protocol proposed therein only 12 days in advance of the deadline for filing a response to the Motion. In apparent disregard of this Court’s local rules, LBHI did not make a good faith (or any) attempt to obtain the consent of the parties (*see* Local Rule 9076-1) or otherwise provide notice to the defendants of the relief sought in the Motion before it was filed on January 10, 2014.

4. If given the opportunity, the parties may be able to negotiate consensual schedules and procedures for the Distributed Action; however, given the number of defendants in this Action, such a resolution was impossible in the 12-day period provided by LBHI.

5. In addition, such time was insufficient to fully consider the implications of the Litigation Protocol and to form a view as to how the Action should proceed. Despite LBHI’s attempt to style the Motion as one seeking a stay and “certain related relief,” the proposed Litigation Protocol is more than merely procedural and may have significant consequences in

this litigation. For example, the Litigation Protocol defers motions to dismiss until the later Phases in the proceedings, requiring each defendant to bear the costs of Phase I and/or Phase II even if it has a meritorious and dispositive defense. Moreover, LBHI has not shown or provided any explanation as to why the Litigation Protocol proposed in the Motion is the most efficient method for proceeding in the Distributed Action.

6. There is no reason for the Court to make a determination with respect to the Litigation Protocol on January 29, and delaying such a determination would not prejudice LBHI. On January 15, 2014, this Court entered a *Bridge Order Extending Stay of Avoidance Actions and Granting Certain Related Relief Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 7004(a)(1)* [Case No. 08-13555; ECF No. 42081] (the “Bridge Order”). Pursuant to the Bridge Order, the stay of the Distribution Action and other Avoidance Actions is extended until such time as the Court has entered an order determining the Motion. In addition, as stated above, Union Investment does not object to an extension of the stay until May 2014 as requested in the Motion. The Distributed Action has been stayed for over three years at the request of LBHI, and it is unnecessary for this Court, upon the unilateral request of LBHI, to establish a schedule and procedures for the entire litigation on such an expedited schedule, especially since the parties have not yet been given an opportunity to resolve these issues consensually.

Conclusion

For these reasons, Union Investment respectfully requests that the Court defer ruling on the Litigation Protocol and instead, enter an order providing: (a) a fixed period of time sufficient for the parties to attempt to negotiate consensual procedures and schedules for the Distributed Action and (b) a schedule for the parties to submit to the Court briefs and/or competing proposed scheduling orders in the event that such issues are not resolved consensually.

Dated: January 22, 2014
New York, New York

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CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of January 2014, a true and correct copy of the foregoing *Response of Union Investment Institutional GmbH in Opposition to the Motion of Lehman Brothers Holdings Inc.* was served electronically upon all counsels of record using the Court's CM/ECF system and was also served via hand delivery upon the following:

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